

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

MAY 30 1995

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In re

Review of the Syndication and  
Financial Interest Rules,  
Sections 73.659 - 73.663  
of the Commission's Rules

MM Docket No. 95-39

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To: The Commission

MAY 30 1995

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

COMMENTS OF CAPITAL CITIES/ABC, INC.

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To: The Commission

COMMENTS OF CAPITAL CITIES/ABC, INC.

Capital Cities/ABC, Inc. ("Capital Cities/ABC"), owner and operator of the ABC Television Network ("ABC"), as well as eight television broadcast stations, responds as follows to the Notice of Proposed Rule Making, FCC 95-144, released April 5, 1995 in the above-entitled proceeding ("Notice"):

Introduction and Summary

The Notice was issued "to afford an opportunity for opponents of fin/syn repeal to demonstrate that retention of restrictions is warranted" (*id.* at ¶ 8). Since the Commission has already concluded that it should repeal the overtly anticompetitive restraints on network syndication it retained in 1993,<sup>1/</sup> the burden of proof is on fin/syn

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<sup>1/</sup> The Commission plainly did not schedule the present review in order to give fin/syn proponents an opportunity to reargue the merits of its 1993 decision to do away with fin/syn restraints on the acquisition of network programs and on foreign syndication. We shall accordingly refer to such restraints only in passing.

proponents,<sup>2/</sup> who will not succeed unless they "demonstrate 'an excellent, a compelling reason' why the restrictions should be continued."<sup>3/</sup>

In our view, nothing that has transpired since 1993 undermines the Commission's decision to impose an explicit sunset on those fin/syn restraints it did not repeal at that time. Indeed, the relevant developments strongly confirm that decision. There is nothing to suggest that acceleration of repeal would disrupt any legitimate "reliance" interests. There is thus every reason to terminate all such restraints immediately.

As we show in point I of our argument, the video marketplace has become even more competitive since 1993, when the Commission found that no network enjoys significant power over its program suppliers.<sup>4/</sup> Competition among the original networks for viewers and programming continues to be intense, and those networks have continued to lose audience share to both broadcast and nonbroadcast rivals. The Fox network has grown materially stronger. Two new TV broadcast networks that were merely announced in 1993 have

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<sup>2/</sup> See Second Report and Order, MM Docket No. 90-162, 8 FCC Rcd 3282, 3340 ("1993 Report"), recon., 8 FCC Rcd 8270 (1993) ("1993 Recon Order"), aff'd sub nom. Capital Cities/ABC, Inc. v. FCC, 29 F.3d 309 (7th Cir. 1994) ("Capital Cities/ABC").

<sup>3/</sup> Notice, ¶ 13, quoting Capital Cities/ABC, 29 F.3d at 316.

<sup>4/</sup> See 1993 Report, 8 FCC Rcd at 3337-42.

actually launched operations. And first-run syndicators continue successfully to distribute prime-time programs without relying on access to affiliates of ABC, CBS or NBC.

Program services distributed by cable also continue to thrive. Noncable technologies (such as DBS) that distribute the same services are beginning to take off. Major studios are now planning to produce movies directly for videocassette viewing. And entry by telephone companies into video program distribution is now so close at hand that those companies have begun to negotiate for long-term supply with program producers.

In short, the 1993 judgment that no network can exert significant market power over program suppliers has been confirmed by subsequent events.<sup>5/</sup> In that light, as we show in point II of our argument, the Commission was plainly right in concluding that the remaining fin-syn restraints are unnecessary and counterproductive. There was (and is) no rational ground for concern that a network lacking market power over suppliers might accumulate a portfolio of off-

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<sup>5/</sup> We recognize that the Commission scheduled this review proceeding, not only to examine trends in market structure, but also to assess whether network behavior in program acquisition during the last two years suggests that its 1993 market power analysis was wrong. See 1993 Recon Order, 8 FCC Rcd at 8280-81. We are confident that the full record of this proceeding will show the contrary. It would be fruitless, however, for us to attempt at this stage to prove a negative -- to canvass every aspect of network behavior that some might claim reflects market power and explain why such hypothetical claims would be meritless. We therefore reserve for reply comments our response to any such claims that may actually be made.

network programs sufficient in quantity or quality to allow the network, if it were permitted to engage actively in off-network syndication, to injure non-affiliated stations through any form of "warehousing" or "affiliate favoritism."<sup>6/</sup> In such circumstances, restraints on network entry into off-network syndication can only harm the public interest in competition and diversity.

There was (and is) even less ground for concern that any such network might, if allowed to engage in all aspects of first-run syndication, "extract" rights from first-run producers, handicap the launch of competing first-run shows, or injure non-affiliated station customers. A network that lacks market power over its network program suppliers a fortiori lacks power over first-run syndicators and producers, and cannot accumulate the power as a syndicator to injure station customers. Once again, preventing networks from acquiring rights in first-run programs and engaging in first-run syndication disserves, rather than promotes, competition and diversity.

There is accordingly no ground for further retention of the anticompetitive fin-syn restraints. Ample time has been provided for all parties to adjust their plans

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<sup>6/</sup> Conversely, even if some networks were found to enjoy significant market power over their suppliers, there would be no ground for reconsideration of fin-syn restraints designed to protect such suppliers. As the Commission has found, such restraints are in any case inherently ineffective. 1993 Report, 8 FCC Rcd at 3309-10.

to withstand the rigors of free competition. The restraints should therefore be terminated immediately.

#### ARGUMENT

##### **I. Developments Since 1993 Strongly Support the Finding That No Network Has Significant Market Power Over Program Suppliers**

The Commission's 1993 finding of no significant market power rested on the intensity of competition among the original networks and the advent of new competitors (Fox, first-run prime-time syndicators and cable program services) with a consequent continuing loss of audience share by the original networks.<sup>7/</sup> A review of those factors today strongly supports that finding.

Competition among the original networks continues to be intense. ABC had barely won the crown as ratings leader for the 1994-95 network season when it was faced with a strong challenge by a resurgent NBC.<sup>8/</sup> The three original networks, moreover, have continued to lose audience to their competitors; their collective average prime time household share for the 1994-95 season was 57, four share points below the previous season's 61.<sup>9/</sup>

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<sup>7/</sup> See 1993 Report, 8 FCC Rcd at 3303-08; 1993 Recon Order, 8 FCC Rcd at 8285-88.

<sup>8/</sup> For the season (9/19/94-4/16/95), ABC had an average prime time household share of 20; NBC, its closest rival, had a 19 share. Nielsen Television Index. NBC nonetheless won the February/March and May "sweeps" periods.

<sup>9/</sup> Nielsen Television Index.

Competition from the fourth network, Fox, has materially increased as a result of the acquisition by Fox of NFL football and of a number of VHF affiliates.<sup>10/</sup> Indeed, during the 1994-95 season, Fox drew more viewers than CBS among adults aged 18-34 and 18-49.<sup>11/</sup> Further, the United Paramount and Warner networks, plans for which had been announced in 1993,<sup>12/</sup> have commenced operation, have survived their initial outing and have both announced plans to expand their initial program schedules.<sup>13/</sup> First-run dramas such as Star Trek/Deep Space Nine and Kung Fu continue to be syndicated successfully in prime time, without reliance on affiliates of the original networks, and others have been successfully launched.<sup>14/</sup>

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<sup>10/</sup> See Economists Incorporated, An Economic Analysis of the Prime Time Access Rule, filed March 7, 1995 in MM Docket No. 94-123, Review of the Prime Time Access Rule ("EI Prime Time Access Report"), at 13-15.

<sup>11/</sup> Nielsen Television Index.

<sup>12/</sup> See 1993 Recon Order, 8 FCC Rcd at 8287 ¶ 36 at n.46.

<sup>13/</sup> See EI Prime Time Access Report, at 15-16; Broadcasting & Cable, May 22, 1995, at 14; id., May 29, 1995, at 13-14.

<sup>14/</sup> See EI Prime Time Access Report, at 17-18. This season's leading new entry in this genre, The Legendary Journeys of Hercules, had an average household rating of 5.8, which made it the third most popular first-run syndicated drama in prime time, and an adults 18-34 rating of 3.6, not much below the average 4.2 rating that CBS drew in the same demographic in prime time. Nielsen Television Index. That performance has already spawned plans for a spin-off series. See Broadcasting & Cable, May 8, 1995, at 54.



Meanwhile, program services distributed by cable have continued to grow in number and strength, and most such program services rely heavily on original programming.<sup>15/</sup> Technologies such as DBS, which distribute many of the same program services, are growing rapidly.<sup>16/</sup> Disney and MCA have both announced plans to make direct-to-video feature films.<sup>17/</sup> And telephone companies are so close to entry into video program distribution, through video dialtone systems, the operation of cable systems, or both, that they have retained executives with long experience in program acquisition and scheduling and have begun to negotiate with producers for long-term program supply arrangements.<sup>18/</sup>

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<sup>15/</sup> See EI Prime Time Access Report, at 16-17 & Appendix B. As of March 23, 1995, 133 new national cable program services had announced plans to begin operation in 1995. See FCC, Cable Services Bureau, Report on Impact of Going Forward Rules, March 23, 1995, at 3 & Chart 2.

<sup>16/</sup> See EI Prime Time Access Report, at 12-13.

<sup>17/</sup> Disney Plans to Make Live-Action Film for Video Stores, Bypassing Theaters, Wall St. Journal, May 25, 1995, at B8.

<sup>18/</sup> Thus, Tele-TV -- a joint venture of Bell Atlantic, Nynex and Pacific Telesis to acquire, create and package programming -- early obtained the continuing advice of Creative Artists Agency and Michael Ovitz, then retained as its CEO Howard Stringer, former president of the CBS Broadcast Group, and more recently retained as its president Sandy Grushow, former president of the Fox Entertainment Group. See Broadcasting & Cable, April 10, 1995, at 16; *id.*, Feb. 27, 1995, at 6 & 10; *id.* Nov. 7, 1994, at 15. Ameritech, Bell South and SBC Communications have entered into a similar joint venture with Disney. See Broadcasting & Cable, April 24, 1995, at 33-34. Tele-TV, which expects to have 200 employees, already employs 135. See Communications Daily, May 10, 1995, at 8-9. According to Stringer, moreover, "discussions already have taken place with the major studios about

As of 1994, the average share of each original network in total video program purchases was approximately 9.4%.<sup>19/</sup> Collusion among networks in program purchasing was never likely.<sup>20/</sup> Today, in a marketplace with six broadcast networks vying for product, along with first-run syndicators, cable program services and VCR outlets, and with major entry by telephone companies impending, collusion or parallel action must be regarded as at most a remote and negligible possibility. In short, there is every reason to reaffirm the Commission's 1993 finding and no reason to reconsider it.

**II. Competition and Diversity Are Disserved by Preventing the Original Networks from Engaging Freely in All Aspects of Off-Network and First-Run Syndication**

The restraints that are scheduled to sunset in November 1995 include (A) the ban on domestic syndication of off-network programs and the related "anti-warehousing"

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acquiring programming or having the studios program a channel of the multichannel service." Broadcasting & Cable, April 10, 1995 at 16. These two ventures alone project investments of \$300 and \$500 million. See Staid Phone Giants Try Marriage to Hollywood, Wall St. Journal, May 24, 1995 at B1.

<sup>19/</sup> See EI Prime Time Access Report, at 25 & Appendix G.

<sup>20/</sup> See Tentative Decision and Request for Further Comments, BC Docket No. 82-345, 94 F.C.C.2d 1019, 1064-65 ¶ 127 (1983) ("Tentative Decision"); see also Economists Incorporated "Report on Series Pricing," Joint Economic Appendix, filed Aug.1, 1990, in MM Docket No. 90-162, at 2 & tab B (refuting charges of parallel action in the prices paid by the original networks for series programs).

requirement,<sup>21/</sup> and (B) the ban on the acquisition or holding of rights in first-run syndicated programs, as well as on the domestic syndication of such programs.<sup>22/</sup> We show in this point that, the conclusions the Commission reached in 1993 about these restraints are even more clearly valid today. No network has significant power over program suppliers, and neither set of restraints can, therefore, be thought to serve the public interest.

**A. The Restraints on Off-Network Syndication Harm the Public**

In 1993, the Commission found "that the networks would not behave in ways detrimental to diversity and competition if the constraints [on off-network syndication] were lifted now."<sup>23/</sup> It found, in particular, "no credible evidence" that "warehousing for the purpose of manipulating prices in the syndication market as a whole" would occur.<sup>24/</sup> The Commission expressed some lingering concern "that the networks could unreasonably delay the commencement of syndication of a few popular, current network programs,"<sup>25/</sup> or could engage in "affiliate favoritism," e.g., "by

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<sup>21/</sup> See 47 C.F.R. § 73.660.

<sup>22/</sup> See 47 C.F.R. §§ 73.659 & 73.660(a).

<sup>23/</sup> 1993 Recon Order, 8 FCC Rcd at 8279 ¶ 18.

<sup>24/</sup> 1993 Report, 8 FCC Rcd at 3322 ¶ 76.

<sup>25/</sup> Id. at ¶ 77.

steering an offnetwork 'hit' to an affiliate."<sup>26/</sup> But this concern (along with other factors) led it only to defer repeal temporarily, for the Commission remained convinced "that the market is presently structured to function competitively in the absence of the rules."<sup>27/</sup>

That conviction was sound then and remains sound today. Confirmation of the 1993 market power finding should lay to rest the "warehousing" and "affiliate favoritism" concerns of 1993. In both cases, the underlying concern was that a network syndicator would have incentives that other syndicators would lack, i.e., an incentive "to maintain the exclusivity of the original network run,"<sup>28/</sup> and "to boost overall network ratings" by helping the performance of affiliates in non-network time periods.<sup>29/</sup> However, every program owner has an incentive to reap maximum value from the exploitation of his program in sequential "windows" and to preserve exclusivity in each window when the objective of profit-maximizing would be served.<sup>30/</sup> Moreover, to the

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<sup>26/</sup> Id. at 3324 ¶ 82.

<sup>27/</sup> 1993 Recon Order, 8 FCC Rcd at 8280 n.27.

<sup>28/</sup> 1993 Report, 8 FCC Rcd at 3322 ¶ 77.

<sup>29/</sup> Id. at 3324 ¶ 82.

<sup>30/</sup> See Economists Incorporated, Joint Economic Appendix to Further Reply Comments, Prepared for Submission as a Joint Appendix with the Reply Comments of Capital Cities/ABC, Inc., CBS Inc. and National Broadcasting Company, Inc. ("Network Joint Economic Appendix"), filed Dec. 21, 1990 in MM Docket No. 90-162, at 4-10.

extent that competing incentives are thought to constitute a threat, such incentives would most certainly not be limited to the three original networks. They would be shared by most syndicators. Viacom, MCA and Time Warner would have incentives as syndicators to favor the cable networks they own or in which they have an interest. Group W and Tribune would have incentives to favor the stations they own. Fox, of course, would have the precise incentives that are ascribed to ABC, CBS and NBC -- the maintenance of exclusivity for the network run of its prime-time programs and the strengthening of its network's affiliates.<sup>31/</sup>

In the final analysis, the existence or not of some unique interests on the part of the three original networks is beside the point. Absent market power -- which does not exist here -- such incentives can do no harm.<sup>32/</sup> None of the postulated conduct by network syndicators could injure any independent station unless the network had some sort of "corner" on the off-network supply of "hit" off-network shows. It is elementary economics that, absent such a corner, stations deprived of off-network "hits" by unreasonable delay in the commencement of syndication or by

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<sup>31/</sup> Time Warner's ownership of the fledgling Warner network would give it the same incentives, albeit in lesser degree at present.

<sup>32/</sup> Thus, antitrust authorities generally consider vertical integration to be competitively neutral or benign, in the absence of market power at some relevant stage. P. Areeda & D. Turner, Antitrust Law, vol. III ¶ 724, p. 195 (1978).

the "steering" of "hits" to affiliates would simply purchase other, equally attractive and suitable off-network "hits" from other syndicators.<sup>33/</sup>

ABC today has a negligible share of the off-network syndication rights in programs available for broadcast in the United States,<sup>34/</sup> and the same is true of CBS and NBC. Since no one can say in advance with any confidence which network prime-time series will be a "hit," the acquisition of anything approaching a corner on "hits" would require each network to obtain the syndication rights to virtually all programs with any prospect of going into syndication. It is implausible, to say the least, that such an effort could succeed unless (i) the networks whose prime-time schedules are substantial sources of off-network product (a group that now includes Fox) could collectively exert market power over their program suppliers, (ii) they collusively pursued the course of acquiring syndication rights in virtually all of their prime-time entertainment

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<sup>33/</sup> See Network Joint Economic Appendix at 13; cf., FCC, Network Inquiry Special Staff, New Television Networks: Entry, Jurisdiction, Ownership and Regulation, vol. II at 732-33 (1980). We ignore, for purposes of this discussion, the availability of first-run syndicated shows and the likelihood that they are close substitutes for off-network "hits." We accept instead, for the sake of argument, the Commission's assumption that off-network "hits" are a separate market on which independent stations specially rely. See 1993 Recon Order, 8 FCC Rcd at 8294 n.64.

<sup>34/</sup> As a practical matter, these are limited to rights which ABC has retained (or not yet disposed of) in programs solely produced or co-produced by ABC.

programs, and (iii) they somehow managed to avoid intervention by antitrust authorities, if not by the Commission.<sup>35/</sup> In the video marketplace we have described in point I, such a course of action is inconceivable.

In short, confirmation of the finding that no network has significant market power over its suppliers, eliminates any basis for even attenuated concerns about abusive behavior by network syndicators of off-network shows. The only effect of the restraints on off-network syndication is to depress the prices networks are willing to pay for off-network rights (thus injuring network program

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<sup>35/</sup> See Network Joint Economic Appendix at 13. It may be argued that a network (or networks) lacking market power might try simply to buy its (or their) way into a "corner" on "hit" shows. Such a course would require the payment to program suppliers of substantially all the value that the network might hope to reap from acquiring a "corner" (including any benefits of extended exclusivity or of strengthening affiliates). *Id.* at 13-15; see Tentative Decision, 94 F.C.C.2d at 1079 ¶ 157. It is extraordinarily unlikely that such a strategy could prove profitable, and it is therefore virtually inconceivable that any network would embark upon it. Any such course of action, moreover, would constitute a highly visible invitation to intervention by antitrust enforcement agencies.

suppliers),<sup>36/</sup> as well as to bar new competitive entry into off-network syndication.

**B. The Restraints on First-Run Syndication  
Harm the Public**

In 1993, the Commission observed that network ownership of stations in the top markets and the established relationships of networks with station affiliates in other markets put networks in a "unique position" vis-a-vis first-run syndicators.<sup>37/</sup> But the Commission found that, in view of "the numbers of outlets available to non-network first-run syndicators and the current success of such syndicators in marketing their programming,"<sup>38/</sup> concerns that networks might improperly exploit their "unique position" were "probably not sufficient to justify continued regulation."<sup>39/</sup> Such concerns justified at most temporary delay in the repeal of the first-run restraints.

Whatever the merits of delaying repeal in 1993, there is no basis for continued regulation today. The

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<sup>36/</sup> The requirement that programs in which an original network holds the syndication rights be made available for syndication no later than four years after the commencement of the network run blocks strategies that might turn out (in a given case) to maximize the program's value. The bar on active syndication means that a network may purchase the syndication right but has to resell it in order to derive any of its value: it cannot itself determine the syndication strategy or earn the syndicator's share of syndication revenues, even where it might be best positioned to do both.

<sup>37/</sup> 1993 Recon Order, 8 FCC Rcd at 8298 ¶ 63.

<sup>38/</sup> Id.

<sup>39/</sup> Id. at 8299 ¶ 64.



largest markets are the most competitive in the country,<sup>40/</sup> and there has been no claim -- much less any basis for a claim -- of overt or tacit collusion among network-owned stations in program purchasing. No network-owned station in such a market can exert market power against first-run syndicators or producers.<sup>41/</sup> Further, no network would have any incentive to require owned stations in such markets to reject attractive first-run programs (which would immediately be snapped up by competitors) in favor of less attractive network-supplied first-run product. Such a course would damage the profitability of the owned stations and sacrifice the benefits of the strong "lead-in" to the network prime-time schedule those stations would otherwise

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<sup>40/</sup> The HHI for the purchase of video programming in New York is probably between 1,111 and 1,622. See Economists Incorporated, An Economic Analysis of the Broadcast Television National Ownership, Local Ownership and Radio Cross-Ownership Rules, filed May 17, 1995 in MM Docket No. 91-221, Review of the Commission's Regulations Governing Television Broadcasting, vol. 1 at 44-46.

<sup>41/</sup> In 1991, the Commission was concerned that networks could "extract" rights or interests from the producers of first-run programs. See Report and Order, MM Docket No. 90-162, 6 FCC Rcd 3094, 3145 ¶ 140, recon., 7 FCC Rcd 345 (1991), vacated sub nom. Schurz Communications, Inc. v. FCC, 982 F.2d 1043 (7th Cir. 1992). In the absence of market power, the concern is baseless. In any case, if network-owned stations had the power to "extract" rights, they could accomplish the same result by paying less for the license to broadcast in their own local markets. A first-run producer or syndicator cannot be made better off by forbidding him to sell program rights to a network.

provide, with little or no promise of compensating profit.<sup>42/</sup>

It is absurd, moreover, to suppose that a network could "influence" its nationwide "web" of affiliates to help it throttle competing first-run syndicators by rejecting their product (however superior) in favor of network-supplied product (however substandard). We have shown in MM Docket No. 94-123, Review of the Prime Time Access Rule, that no network has the power to force uneconomic program choices on its affiliates in the clearance of network programs.<sup>43/</sup> Plainly, no network has the power to dictate its affiliates' non-network program choices. Here, the choice that is posited would be contrary to the affiliate's interest in each individual case, as well as the affiliate's general interest in obtaining the best possible first-run shows from a maximum number of suppliers (and therefore at

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<sup>42/</sup> It is not the case, moreover, that successful launch of a first-run syndicated show requires clearance on network-owned or affiliated stations. As shown above, many such shows are successfully launched in prime time with no clearances on such stations. A conspiracy between a network and its affiliates to block the launch of a competing first-run show -- even if extended to include all major networks and their affiliates -- could not hope to succeed.

<sup>43/</sup> See Comments of Capital Cities/ABC, Inc., filed March 7, 1995, in MM Docket No. 94-123, at 7-10; Reply Comments of Capital Cities/ABC, Inc., filed May 26, 1995, in MM Docket NO. 94-123, at 24-29.

the best price).<sup>44/</sup> Nothing in the nature of the network/affiliate relationship suggests that affiliates would subordinate their own interests to those of network syndicators.<sup>45/</sup>

In sum, there was and is no reason for concern that the entry by one or all of the original networks into any aspect of first-run syndication would harm competition or diversity. If competition for programs among networks and between networks and other video program distributors is sufficient to prevent networks from oppressing their program suppliers, then the analogous competitive forces are surely robust enough to prevent abusive conduct by networks in first-run syndication.

There is considerable reason, however, to believe that network entry would be beneficial. Producers of first-run programs could not be worse off and might well be better off if an additional set of buyers were competing to finance their productions or engage in co-productions in exchange

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<sup>44/</sup> It would also be contrary to the network's interest in obtaining the strongest possible "lead-in" to its prime-time schedule from the affiliate.

<sup>45/</sup> There is also no basis for concerns that network first-run syndicators might "steer" first-run "hits" to affiliates and owned stations. See 1993 Report, 8 FCC Rcd at 3329 ¶ 95. There is no cognizable prospect that networks could corner any market or submarket of first-run "hits." For reasons already discussed, unless they could achieve such a corner, refusal to sell any first-run "hits" they acquired to the top bidder in each market could only injure them, rather than the disfavored stations.

for program rights. Contributions to diversity by first-run programs that are produced by network-owned stations or nonbroadcast divisions or subsidiaries of network companies would be encouraged, rather than discouraged.<sup>46/</sup> And new competition in first-run syndication would produce the benefits that competition generally produces.

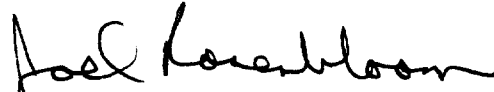
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<sup>46/</sup> In 1983, the Commission found that the ban on first-run syndication prevented, or made unnecessarily costly, ventures such as the syndication by network-owned stations of their own, locally-produced programs or the syndication by the non-broadcast subsidiary of a network company of programs based on its special expertise. Tentative Decision, 94 F.C.C.2d at 1090 ¶ 184. The Commission noted that "[i]n each case syndication could be performed by some other entity, but in cases where a network is best positioned to perform the job an efficiency loss to society is incurred if it is not allowed to do so." Id.

**CONCLUSION**

For the foregoing reasons, we think it clear that the remaining fin-syn restraints should be terminated as soon as possible. The facts will not permit fin/syn proponents to carry their burden of proof, much less show "an excellent, a compelling reason" why fin/syn restrictions should be continued. No purpose would be served by delaying termination until November. We therefore urge the Commission to accelerate the sunset, as suggested in paragraph 14 of its Notice.

Respectfully submitted,



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